

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VALENTE ALVAREZ-GUERRERO,

Petitioner,

v.

JEFFREY UTTECHT,

Respondents.

Case No. C16-0976-RSM

ORDER DISMISSING FEDERAL
HABEAS ACTION

The Court, having reviewed petitioner's federal habeas petition, respondent's answer to the petition, the Report and Recommendation of Mary Alice Theiler, United States Magistrate Judge, Petitioner's Objections thereto, and the remaining record, hereby finds and ORDERS:

(1) The Court adopts the Report and Recommendation ("R&R").

(2) Petitioner filed timely Objections on November 22, 2016. Dkt. #16. In those Objections, he argues first that Judge Theiler erred in dismissing Claims 1 and 4(c) and (d) for the failure to exhaust those claims in the state court. Dkt. #16 at 2-3. He asserts that he properly exhausted those claims in the Washington Supreme Court, by incorporating them by reference in his brief. *Id.* Having reviewed the record in this matter, the Court finds that Judge Theiler properly concluded that those claims were not raised, and were therefore not properly exhausted. Accordingly, this Court rejects Petitioner's Objections as to those claims. Petitioner also appears

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1 to argue that Judge Theiler erred in dismissing Claim 5 for his failure to exhaust the claim. Dkt.
2 #16 at 4. Yet, at the same time, Petitioner recognizes that Judge Theiler found the claim had
3 been properly exhausted. Thus, it is not clear where Petitioner is directing his Objections.
4 Regardless, this Court further addresses Claim 5 below.

5 Petitioner next argues that Judge Theiler erred in her analysis of Claim 2
6 involving double jeopardy. Dkt. #9 at 5-7. Petitioner appears to essentially repeat the same
7 arguments he made before Judge Theiler. *Id.*; *see also* Dkt. #15 at 13-15. Nothing in
8 Petitioner's Objections demonstrates that Judge Theiler erred in analyzing Claim 2 and then
9 rejecting it. Accordingly, this Court also rejects Petitioner's Objections as to that claim.

10 Likewise, with respect to Claims 3, 4(a), (b) and (e), 5, 7 and 8, the Court also
11 finds that Petitioner essentially repeats the same arguments made before Judge Theiler. Dkt. #16
12 at 8-21; *see also* Dkt. #15 at 15-25. Nothing in Petitioner's Objections demonstrates that Judge
13 Theiler erred in analyzing those Claims and rejecting them. Accordingly, this Court also rejects
14 Petitioner's Objections as to those claims.

15 Finally, Petitioner Objects to Judge Theiler's analysis of his constitutional
16 challenges to the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"). Dkt. #16 at 21-
17 23. Petitioner argues that AEDPA violates the Due Process and Equal Protection Claims of the
18 Fourteenth Amendment, and is therefore unconstitutional. *Id.* Judge Theiler noted that
19 Petitioner had failed to provide any legal authority in support of his claim and rejected it as
20 frivolous. Dkt. #15 at 25. In his Objections, Petitioner states that this is an issue of first
21 impression and that is why he has no legal authority to cite. Dkt. #16 at 22. While this Court
22 could find no cases in this Circuit addressing the issue, the United States District Court for the
23 Southern District of West Virginia recently addressed a nearly identical argument. *Smith v.*

1 *Ballard*, 2016 U.S. Dist. LEXIS 81309 (S.D.W.V. May 26, 2016). In that case, the court
2 rejected the petitioner's argument that AEDPA was unconstitutional because it did not provide
3 notice of certain requirements, noting that the petitioner had filed his claim more than nine years
4 after the enactment of AEDPA, and therefore he had appropriate notice of the statute's
5 requirements. *Smith v. Ballard*, 2016 U.S. Dist. LEXIS 81309 at *18-19. In rejecting
6 Petitioner's argument in this case, Judge Theiler similarly noted that Petitioner had access to the
7 law library where the statute was available to him "in some form," and therefore, Petitioner also
8 had notice of its requirements. Dkt. #15 at 25. Petitioner raises no argument in his Objections
9 that persuades this Court to find Judge Theiler in error in her analysis. Accordingly, the Court
10 rejects Petitioner's argument that AEDPA as unconstitutional.

11 (3) As a result, Petitioner's petition for writ of habeas corpus is DENIED, and this
12 action is DISMISSED with prejudice.

13 (4) In accordance with Rule 11 of the Rules Governing Section 2254 Cases in the
14 United States District Courts, a certificate of appealability is DENIED. Petitioner does not
15 address Judge Theiler's recommendation with respect to a certificate of appealability, and the
16 Court agrees that none should issue. *See* Dkt. #15 at 26.

17 (5) The Clerk SHALL send copies of this Order to Petitioner, to counsel for
18 respondent, and to the Honorable Mary Alice Theiler.

19 DATED this 14 day of December, 2016.

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22 RICARDO S. MARTINEZ
23 CHIEF UNITED STATES DISTRICT JUDGE